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Stephen J. Orens
301-517-4828
sorens@milesstockbridge.com

July 30, 2008

The Honorable Susan R. Hoffman, Mayor
The Honorable Members of the Rockville City Council
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

Re: City of Rockville Comprehensive Map Amendment MAP 2007-00101
Recommended Changes to 606 South Stonestreet Avenue

Dear Mayor Hoffman and Councilmembers:

We have recently written to you on behalf of our client, John J. Fitzgerald, Jr., the owner of the commercial property located at the corner of South Stonestreet Avenue and Reading Avenue. The Rockville Planning Commission has recommended that Mr. Fitzgerald's property be down-zoned from the current C-1 zone to the residential R-60 zone. If the Mayor and City Council approves that down-zoning the existing uses will be rendered non-conforming. As stated in our previous letter, Mr. Fitzgerald was totally unaware of this down-zoning proposal for the South Stonestreet Avenue property until he received a letter from James Wasilak, the Chief of Planning on Saturday July 12, 2008.

We have reviewed the available public records regarding the proposed Comprehensive Map Amendment, Map2007-00101, and have found nothing in that record that would support the proposed down-zoning of this longstanding commercial property.

The C-1 zoned commercial property at the corner of South Stonestreet Avenue and Reading Avenue was addressed in the 2004 East Rockville Neighborhood Plan. While noting that there had been complaints about unacceptable behavior in the vicinity prior to the adoption of the 2004 Neighborhood Plan "encourages a limited amount of commercial development to provide convenient retail services for the community." That plan supports the C-1 Zone for this property.

The East Rockville Plan includes recommendations for the rezoning of specific parcels of land. The Fitzgerald Property at South Stonestreet and Reading Avenues is not recommended for rezoning by the 2004 plan or for that matter, by any other plan or study.

Map Amendment, Map2007-00101, is stated to be a comprehensive rezoning. Every comprehensive rezoning must be "the product of careful study and consideration." *Anderson*

House, LLC v. Mayor and City Council of Rockville, 939 A.2d 116, 127 (2008). This proposed down-zoning is not the product of careful study and consideration and is inconsistent with both the East Rockville Plan and the “Proposed Draft Comprehensive Map Amendment” presented by the Representatives of Rockville Zoning Ordinance Review Committee (“RORZOR”). RORZOR recommended the continuation of the existing commercial zoning for the South Stonestreet Avenue and Reading Avenue property.

At some point in the review process, without any supporting testimony, or written statement in the record, the RORZOR recommendation for this single property was abandoned and the City Planning Commission, apparently at its April 24, 2008 meeting, voted to recommend that Mr. Fitzgerald’s property be down-zoned to the R-60 classification. The fact that Planning Commission minutes are not yet available hindered our review of the discussion that gave rise to the recommendation.

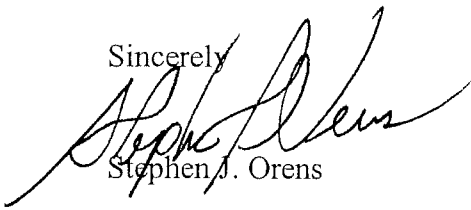
It appears, however, from what we have been able to review that the Planning Commission focused on this property during its review and this property was then singled out for down-zoning in April 2008. Notwithstanding the individualized focus on this single property, Mr. Fitzgerald was not given notice of the proposed down-zoning and was not given prior notice of the public hearings held by the Mayor and City Council on June 16 and June 30, 2008 at which time the proposed down-zoning of this single property was considered. Mr. Fitzgerald was denied the opportunity to effectively participate in a process that focused on his property.

On July 12, 2008 Mr. Fitzgerald was informed by Mr. Wasilak that the “record of the public hearing has been held open until close of business on Wednesday, July 16, 2008” for him to submit testimony. Mr. Fitzgerald received that notice the following Saturday, July 12 and had only two business days in which to engage consultants, conduct studies and prepare and submit testimony to oppose this down-zoning. An impossible task.

Down-zoning Mr. Fitzgerald’s property is not a comprehensive zoning action – it is a focused rezoning aimed at a single property. Mr. Fitzgerald has been denied due process as required by Article 66B of the Maryland Code Annotated, by the Court of Appeals in *Mayor and Council of Rockville v. Woodmont Country Club*, 705 A.2d.301 (1998) and more recently by the appellate decision in *Overpak v. Mayor and City Council of Baltimore*, 909 A.3d 235 (2006).

We urge the Mayor and council to reject the unstudied and unsupported Planning Commission recommendation and retain the C-1 zoning for the Fitzgerald Property.

Sincerely,



Stephen J. Orens

Cc: John J. Fitzgerald